

KELLEY EVERETTE

IBLA 78-651

Decided June 18, 1979

Appeal from decision of New Mexico State Office, Bureau of Land Management, dismissing protest as to awarding oil and gas lease parcel No. NM 799, serial No. NM 34250.

Affirmed.

1. Oil and Gas Leases: Applications: Generally

There is no prohibition against an oil and gas lease offeror's using an address which is commonly used by other offerors.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client, bound by a "put option," does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases:

Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous non-competitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to present evidence of an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

4. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent, such statements bearing facsimile signatures, are submitted along with his offer card.

APPEARANCES: Kelley Everette, pro se; James W. McDade, Esq., McDade and Lee, Washington, D.C., for respondent Manuel Weisbuch.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Kelley Everette appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 24, 1978, dismissing his protest as to awarding oil and gas lease parcel No. NM 799 to Manuel Weisbuch.

Manuel Weisbuch used a filing service, Stewart Capital Corporation (Stewart) to enter his drawing entry card (DEC). His rubber stamp signature was placed on the card by an employee of Stewart, and his card was drawn with first priority in the August 10, 1978, simultaneous drawing. Appellant's card was drawn with second priority. On August 24, 1978, BLM issued a decision requiring that Weisbuch submit additional information regarding the formulation of his offer and the facsimile signature. Weisbuch filed a statement which showed that: (1) The address or post office box on the offer to lease is his residence or mailing address; (2) his stamped signature and the

date and parcel number were affixed to the entry card by employees of Stewart; (3) he has no knowledge of whether the entry card was signed or dated before or after the offer was formulated, and by whom.

In this statement Weisbuch referred to the statement which accompanied his offer. This latter statement describes the relationship between Weisbuch and Stewart and lists the services provided by Stewart in their contract.

In his protest filed August 21, 1978, Everett contends that: (1) Weisbuch's DEC does not bear his true address, and he questions whether Weisbuch actually exists; (2) the signature on Weisbuch's DEC is a facsimile signature and whenever an agent performs an act exercising his discretion, 43 CFR 3102.6-1(a)(2) requires that separate statements of interest by both offeror and agent be filed along with the DEC.

The State Office dismissed the protest because Everett had not submitted any evidence which would be the basis for rejection of the number one priority. The State Office concluded that there was no reason to hold up the issuance of the lease.

In his statement of reasons appellant contends that the use of a common address on a DEC allows a filing service agent to manipulate, obtain, control, and acquire leases or direct the client only to buyers chosen by the agent with whom there may be collusion. As an example of how Stewart gains control of leases won by its clients, appellant points to the fact that the first year's rental on the leases is paid by Stewart. The client may not even know he has won, appellant explains, and there is no way that BLM or anyone else can contact the winner himself because his address is not available. To illustrate this, appellant states that receipt on restricted delivery mail addressed by him to Weisbuch only was received and signed by R. Ponder [sic] and rubber stamped "Merrill, Lynch, Pierce, Fenner & Smith, Inc." Appellant considers this a distortion of the facts.

Through the use of its common address on all cards filed through its agency, appellant contends that Stewart has complete control over leases won by its clients, thereby giving Stewart a hidden interest in the lease, and an interest in the lease must be disclosed at the time of filing under 43 CFR 3102.7. He states that 43 CFR 3113.5-2 is designed to prohibit any individual or entity from gaining a greater probability of successfully obtaining a lease or interest therein, and the "put option" arrangement gives Stewart an unfair advantage over other offerors in obtaining such lease or interest. Since Stewart was acting as Weisbuch's agent-in-fact, appellant states that 43 CFR 3102.6-1 requires both Weisbuch and Stewart to file statements of interest with the DEC. Appellant also charges that Stewart

has not filed U.S. Postal Form 3801, Standing Delivery Order, for Weisbuch as required by U.S. Postal Code 165.341b, and this violation allows the agent to manipulate, obtain, control, and acquire leases or to direct them to buyers chosen by the agent with whom there may be collusion. He also asserts that collusion may exist between Stewart and other companies.

In his answer Weisbuch contends that appellant made no showing of any control over, or other interest in, the offer to lease by one other than the offeror. Regarding the return receipt card for restricted delivery, Weisbuch says that it was properly signed by Merrill Lynch, because that is Weisbuch's office address. He explains that the receipt was sent there because Stewart could not sign due to the fact that it was restricted delivery.

Weisbuch states that separate statements were filed by Weisbuch and Stewart with the DEC as required by 3102.6-1(a)(2) when any agency situation exists. Weisbuch alleges that appellant has failed to present any evidence that Stewart has an interest in Weisbuch's lease. Therefore, he reasons, the provisions of 43 CFR 3102.7 requiring that other parties in interest file statements and 43 CFR 3112.5-2 prohibiting multiple filing are not applicable.

According to Weisbuch, appellant neither explains how the abuses he envisions would result from the relationship between a filing service and its clients nor offers any evidence whatsoever that any abuses have taken place in the operations of Stewart.

In response to Weisbuch's answer, appellant notes that Weisbuch avoided mentioning whether or not a "put option" existed between Weisbuch and Stewart. Appellant claims that the mere fact that Stewart files DEC's for Weisbuch is evidence that Weisbuch has signed with Stewart and that a "put option" contract does exist.

Appellant filed a letter with this Board dated December 12, 1978, from the Postmaster, United States Post Office, Chicago, Illinois, to appellant concerning the certified letter mailed return receipt "restricted delivery" to Weisbuch, but signed by someone other than the addressee. The Postmaster explained that Weisbuch was no longer an employee of Stewart, and therefore the article was forwarded to Merrill Lynch where an authorized agent, R. Conder, signed for the article. From this appellant concludes that Weisbuch was an employee of Stewart and that these circumstances could lead to both a "collusive scheme" and an "inherently unfair situation." Weisbuch's response stated that the Postmaster has no knowledge that Weisbuch was an employee of Stewart and that in fact Weisbuch is not and never has been Stewart's employee.

[1] Use of a common address on a DEC does not, of itself, invalidate an offer. Johnnie B. Gryder, 38 IBLA 146, 148 (1978); Dexter B.

Spalding, 37 IBLA 4, 6 (1978); Bruce E. Watkins, 36 IBLA 168, 169 (1978). Appellant sees the use of Stewart's address on the DEC as a means by which Stewart can control its clients by screening out and allowing only those contacts Stewart wishes. Appellant, however, has presented no evidence of wrongdoing or violation of the regulations.

The statement of the Postmaster that Weisbuch was an employee of Stewart appears to be an assumption on his part in order to offer an explanation of why addressee Weisbuch was not at Stewart's address.

[2-3] Appellant contends that Weisbuch's offer should be rejected because Stewart has an undisclosed interest in Weisbuch's lease which violates 43 CFR 3102.7 and a greater probability of successfully obtaining a lease or interest in a lease which violates 43 CFR 3115. For the reasons stated below, we find that this contention is without merit.

Accompanying the statement requested by BLM regarding the formulation of his offer, Weisbuch submitted an affidavit signed by Stewart's "DEVEX" Program Director. In this he stated that the DEVEX application form represented the only relationship extant between Stewart and Weisbuch. This form directs Stewart to file applications on the recommended parcels, advance the first year's rental, and to take such actions, including the execution of documents, as are required to have a lease issued in Weisbuch's name. We have reviewed the brochure on Stewart's DEVEX plan. This particular plan is limited to 100 full subscriptions and concentrates on leases which attract fewer applicants. Stewart says this factor, plus a plan for extra filings, gives the client "powerful probabilities" to acquire potentially valuable leases. There is nothing in the plan which indicates that Stewart has an interest in Weisbuch's offer; nor is there any mention of selling the lease or an interest in the lease to Stewart. The brochure reads: "You are free to keep the lease [if you win] or sell it to whomsoever you choose. Independent landmen are available to advise or represent you in your sale. Stewart does not buy or sell DEVEX leases or participate in sales in any way."

Appellant assumes that Weisbuch has executed a "put option" with Stewart which was explained by the Board in D. E. Pack, 40 IBLA 45, 46 (1979), footnote 1, as follows:

The so-called "put option" describes an agreement between the leasing service and its client whereby the service agrees in advance to purchase, at the client's sole election, a specified percentage of any lease which the client might be awarded at a pre-determined price. However, the leasing service has no right to compel the client to convey any interest to it, so that when the lease issues to the client, the service has no enforceable interest therein.

Where, as here, there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving the filing service an enforceable interest in the lease, absent which the protest is properly rejected. Jack Mask, 41 IBLA 147 (1979); Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979). Appellant has not submitted such evidence.

Even if the facts showed that Weisbuch had executed a "put option" the Board has held that such an agreement does not constitute an "interest" in the offer as defined in 43 CFR 3100.0-5(b), and it does not appear that either 43 CFR 3102.7 (the regulation requiring disclosure of interests in the lease) or 43 CFR 3112.5-2 (the regulation prohibiting the filing of offers for more than one client on a parcel) has been violated. Jack Mask, *supra*; D. E. Pack, 40 IBLA 45 (1979); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); John V. Steffens, 74 I.D. 46 (1967).

[4] The case file shows that Weisbuch's drawing entry card was, in fact, accompanied by statements from Weisbuch and Stewart as required by 43 CFR 3102.6-1(a)(2) when the agent, on behalf of the offeror, writes, stamps, prints, or otherwise applies the offeror's signature to the DEC. Weisbuch's statement indicates, in part, as follows:

I have contracted with Stewart Capital Corporation to perform the following functions: affix my signature by means of rubber stamp or other facsimile to offering cards and this statement (which facsimile signatures shall be deemed mine for all purposes); supply me with the benefit of a ranking of the lease parcels available each month under the simultaneous program; prepare a set number of offering cards on my behalf for a set number of months; file such offering cards on the ranked parcels available each month during the life of my contract; advise me of any winning leases obtained under the program; advance any rental payments due on winning leases and bill me therefor immediately.

Neither Stewart Capital Corporation nor any other person or organization not named on my offering card has any interest in my offering. No agreement nor understanding exists between me and Stewart Capital Corporation or any other person not named on the offering card, either oral or written, by which Stewart Capital Corporation or such other person has received, or is to receive any interest in a lease if issued as a result of this filing, including

royalty interest or interest in any operating agreement. I do, of course, preserve the right, after filing this offer, to create a contract of assignment or sale of my interest in this offer, to any qualified person or organization.

The content of the statement filed by Stewart is essentially the same.

The facts in this case are similar to those in Virginia L. Jones, 34 IBLA 188 (1978), in which Fillingim's offer was drawn with first priority and appellant's drawn with second priority. Fillingim's DEC was accompanied by a statement identical to the one which accompanied Weisbuch's. In addressing itself to the contention of Jones that Fillingim's offer had violated 43 CFR 3102.6-1, the Board stated:

In the instant case, Fillingim's offer meets the requirements of these regulations. It bears a rubber-stamped facsimile of his signature, admittedly affixed on his behalf by Stewart, his designated agent. Thus, the requirement that separate statements be filed operates here. Fillingim did in fact submit these separate statements along with his drawing entry card. These statements indicate unequivocally that no agreement exists between him and Stewart under which Stewart receives or will receive any interest in the lease if issued. Since it was declared that there was no agreement creating an interest in Stewart, Fillingim was not required to submit a copy of "any such agreement" with his offer card. Accordingly, BLM's decision dismissing appellant's protest must be affirmed, since the present record does not show that Fillingim failed to comply with any regulation concerning the filing of simultaneous noncompetitive oil and gas lease offers.

Under the rationale and holding of the recent W. H. Gilmore, 41 IBLA 25 (1979), statements signed with a facsimile signature meet the requirements of 43 CFR 3106.6-1. We accordingly find that the statements of Weisbuch and Stewart meet the requirements of this regulation.

As for alleged violations of the postal regulations, this Board has no jurisdiction over these matters.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE HENRIQUES CONCURRING IN THE RESULT:

I dissented from the majority view expressed in W. H. Gilmore, 41 IBLA 25 (1979), because I thought unlimited use of facsimile signatures on drawing entry cards and attached statements was contrary to the intent of the regulations governing simultaneous filings of oil and gas leases, and that the work of BLM would be greatly magnified in attempting to verify the authenticity of a DEC offer bearing such a facsimile signature and its supporting statements similarly impressed with a facsimile signature. My personal opinion has not changed; I continue to think that the majority erred in Gilmore. However, I am convinced that further dissent will be futile. I am constrained, therefore, to abide by the holding of the majority of this Board, and unwillingly concur in the result expressed by Judge Lewis herein.

Douglas E. Henriques
Administrative Judge

